

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK LEWIS NEDROW, a/k/a MARK L.
NEDROW, a/k/a MARK LOUIS NEDROW,

Defendant-Appellant.

UNPUBLISHED

May 17, 2011

No. 297166

Wayne Circuit Court

LC No. 09-026001-FH

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of first-degree home invasion, MCL 750.110a(2), malicious destruction of a building, MCL 750.380(4)(a), and domestic assault, MCL 750.81(2). The trial court sentenced defendant to eight to 20 years' imprisonment for first-degree home invasion, 93 days in jail for malicious destruction of a building, and three months in jail for domestic assault. We affirm.

This case arises out of a domestic assault incident involving defendant and his girlfriend, Sandra Lynn Whitt, at the residence of Colin Treglown. While defendant does not contest the domestic assault conviction associated with his treatment of Whitt, he contests whether he actually entered Treglown's house or did so with the intent to commit an assault, as pertinent to the first-degree home invasion conviction.

Defendant first argues that the evidence was insufficient with respect to his conviction for first-degree home invasion. Sufficiency of the evidence is reviewed de novo on appeal. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

First-degree home invasion has three elements: (1) breaking and entering a dwelling or entering without permission; (2) intent when entering to commit a felony, larceny, or assault in the dwelling, or at any time while entering, present in, or exiting the dwelling committing a felony, larceny, or assault; and (3) while entering, present in, or exiting the dwelling, the

defendant is either armed with a dangerous weapon, or another person is lawfully present in the dwelling. *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010); MCL 750.110a(2).

In this case, the evidence was sufficient to enable a rational trier of fact to find the elements of first-degree home invasion proven beyond a reasonable doubt. On October 5, 2009, defendant attempted to locate Whitt by calling her on her cell phone. When speaking with Whitt on the phone, defendant recognized Treglown's voice in the background, so he proceeded to Treglown's house. Whitt and Treglown were inside. According to Treglown, defendant did not have permission to enter the house. Defendant ripped a screen off a front window, attempted to climb through the window, and made it through the window up to his chest, at which point Treglown struck him with a baseball bat. Next, defendant kicked down Treglown's front door and came one or two feet into the house. Treglown's testimony is sufficient to prove beyond a reasonable doubt that defendant entered a dwelling without permission, and a person was lawfully present during entry.

The evidence also demonstrated beyond a reasonable doubt that defendant intended to commit an assault when he entered the dwelling. Assault is "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." *People v Sanford*, 402 Mich 460, 479; 265 NW2d 1 (1978), quoting Perkins, Criminal Law (2d ed), p 117 (internal quotation marks omitted). "[B]attery is the successful accomplishment of an attempted-battery assault." *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004). Words, actions, and circumstantial evidence can establish intent. "[I]ntent, of course, is a secret of a man's mind, and he can disclose it by declarations or by his actions. And actions sometimes speak louder than words." *People v Quigley*, 217 Mich 213, 217-218; 185 NW 787 (1921). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotation marks and citation omitted). "[M]inimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

From jail, defendant wrote a letter to Treglown, which stated, in part: "I wasn't trying to break in or take anything. I just wanted Sandy out. That's all." Treglown testified that immediately after defendant kicked down his front door, defendant took one or two steps into the house and grabbed Whitt by her hair. Next, defendant dragged Whitt down the steps, threw her to the ground in the flower garden, and began striking her in the face. Defendant's words and actions are sufficient circumstantial evidence that he intended to commit an assault when he entered the dwelling.

Defendant also argues that the verdict is against the great weight of the evidence. We disagree. A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Where a challenge to the great weight of the evidence follows a bench trial, this Court examines the trial court's findings for clear error, giving regard to the court's special opportunity to judge the credibility of the witnesses who appeared before it. See *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006);

MCR 2.613(C). Conflicting testimony and witness credibility are generally insufficient grounds for a new trial. *Lemmon*, 456 Mich at 643. In this case, defendant essentially argues that there is conflicting testimony, and the trial court incorrectly assessed witness credibility. These are insufficient grounds to grant a new trial. See *id.*

Defendant, in his brief, raised three other issues: prosecutorial misconduct, judicial impartiality, and a factual error. Defendant did not raise these issues in his statement of questions presented. Therefore, he did not properly present them to this Court. See *People v Anderson*, 284 Mich App 11, 16; 772 NW2d 792 (2009), citing MCR 7.212(C)(5). Defendant additionally abandoned these issues because he offered no argumentation and cited no relevant authority to support his positions. See *People v Kelly*, 231 Mich App 627, 640-41; 588 NW2d 480 (1998). Moreover, we have reviewed the arguments, and they are meritless.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Jane M. Beckering